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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,530	07/28/2003	Joe Don Byles		4306

7590 03/03/2004
Joe D. Byles
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New Braunfels, TX 78132

EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,530

Applicant(s)

BYLES, JOE DON

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Son T. Nguyen
Prim. Exm. 3643

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sharp needle-like device for injecting a gaseous or liquid pest control material into the reticulated material or the means for injecting a gaseous or liquid pest control material must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

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3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

4. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 7,8,15,16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The sharp needle-like device for injecting a gaseous or liquid pest control material into the reticulated material an/or the means for injecting a gaseous or liquid pest control material were not described as part of the invention. In addition, page 7 of the specification states that the present invention is to be used without the use of chemicals; therefore, injecting the reticulated material with a needle containing pest control material is a contradiction to what page 7 of the present invention teaches.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-8,15,16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the word "preventor" should be changed to ---preventer---; the word "continous" should be changed to ---continuous---; the phrase "the substantially continous panel" in line 6, lacks prior antecedent basis.

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Regarding claim 4, there are two periods at the end of the claim. Regarding claims 7 & 8, same errors as claim 1; also, the injecting a gaseous or liquid pest control material is unclear because this claimed subject matter is not regard as applicant's invention for applicant specifically stated on page 7 of the specification that applicant's invention does not employ chemicals. Regarding claims 15 & 16, the means for injecting a gaseous or liquid pest control material (such as a sharp needle) is unclear because this claimed subject matter is not regard as applicant's invention for applicant specifically stated on page 7 of the specification that applicant's invention does not employ chemicals. Applicant is encourage to check other spelling and/or grammatical errors that the Examiner may have missed. Upon making these corrections, Applicant is reminded of new matter because the original disclosure never teaches a needle for injecting chemicals; therefore, caution should be taken to incorporate this limitation for it may be considered new matter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 1-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5099599 (herein 599).

For claim 1, 599 discloses a method of installing a turf grass or landscape planting moisture and air reservoir, base soil weed germination preventer, and insect

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soil movement preventer, the method comprising the steps of: positioning a continuous dimensional material (labeled as WATER-ABSORBENT NON-BIODEGRADABLE MATERIAL) over a base surface (labeled as SOIL) in an area which is to contain landscape plantings; and positioning turf grass or landscape plants over the substantially material, wherein the dimensional reticulated material consists of a material with a partially open cell size (col. 1, lines 64-68) such that roots of turfgrass and landscape plants growing from above the material can penetrate and grow through the material but leaf material of weeds and plant seeds germinating from below the material are too large and cannot grow up through the cell size of the material, also wherein the cell size of the reticulated material is too small for insects to enter and move through the material, also wherein the reticulated material provides an air and water reservoir for the roots growing into the reticulated material. However, 599 is silent regarding the material being reticulated and in continuous panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ reticulated continuous material or panel for the material in the method of 599 because in laying ground turf material, it is notoriously well known that these material are either manufactured or cut into reticulated continuous panel for ease of handling in laying the panel down and for storage and shipping.

For claim 2, 599 discloses wherein the substantially continuous dimensional reticulated material is chosen from a material of polyurethane foams (col. 1, line 66).

For claim 3, 599 is silent regarding the polyurethane foam is made up of a polyether material that is non-reticulated and has an open cellular structure. It would

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have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam is made up of a polyether material that is non-reticulated and has an open cellular structure in the method of 599, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 4, 599 is silent regarding the polyurethane foam has a pore size of substantially 100 pores per inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam having a pore size of substantially 100 pores per inch in the method of 599, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 5, 599 is silent regarding the polyurethane foam has a density of .1 to 20 pounds per cubic foot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam has a density of .1 to 20 pounds per cubic foot in the method of 599, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 6, 599 is silent regarding the open cell reticulated material is laid down in panels which substantially butt up to each other or over lap so as to leave no gaps beneath the turfgrass or landscape plantings. It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to have the open cell reticulated material is laid down in panels which substantially butt up to each other or overlap so as to leave no gaps beneath the turfgrass or landscape plantings in the method of 599, since it is notoriously well known in the art that turf grass material are manufacture in reticulated panels for ease of handling and when these panels are laid down in an area for turf grass, these panels are laid so as to leave no gaps for safety and aesthetic reasons.

For claim 7, this claimed limitation is similar to claim 1 (see above) except for the step of periodically injecting a gaseous or liquid pest control material into the open, cellular structure of the reticulated material. 599 discloses in col. 1, lines 37-43, the open cell structure can be feed lawn chemicals, etc (col. 1, lines 37-43).

For claim 8, 599 is silent regarding injecting pest control material by using a sharp needle-like device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a sharp needle-like device to inject pest control material in the method of 599 since it is notoriously well known in the art to use a sharp needle to inject chemicals into lawns or turf grass.

For claim 9, 599 discloses a weed and insect control apparatus adapted to be incorporated into the root zone of a turfgrass or landscape planting area, the apparatus comprising: a dimensional material which may be positioned substantially parallel to the area to be planted; the dimensional material consisting of a material with a partially open cell size such that roots of turfgrass and landscape plants growing from above the material can penetrate and grow through the material but leaf material of weeds and

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plant seeds germinating from below the material are too large and cannot grow up through the cell size of the material, also wherein the cell size of the reticulated material is too small for insects to enter and move through the material, also wherein the reticulated material provides an air and water reservoir for the roots growing into the reticulated material. However, 599 is silent regarding the material being reticulated and in continuous panel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ reticulated continuous material or panel for the material in the apparatus of 599 because in laying ground turf material, it is notoriously well known that these material are either manufactured or cut into reticulated continuous panel for ease of handling in laying the panel down and for storage and shipping.

For claim 10, 599 discloses polyurethane foams (col. 1, line 66).

For claim 11, 599 is silent regarding the polyurethane foam is made up of a polyether material that is non-reticulated and has an open cellular structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam is made up of a polyether material that is non-reticulated and has an open cellular structure in the apparatus of 599, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 12, 599 is silent regarding the polyurethane foam has a pore size of substantially 100 pores per inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam having

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a pore size of substantially 100 pores per inch in the apparatus of 599, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 13, 599 is silent regarding the polyurethane foam has a density of .1 to 20 pounds per cubic foot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a polyurethane foam has a density of .1 to 20 pounds per cubic foot in the apparatus of 599, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 14, 599 is silent regarding the open cell reticulated material is laid down in panels which substantially butt up to each other or over lap so as to leave no gaps beneath the turfgrass or landscape plantings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the open cell reticulated material is laid down in panels which substantially butt up to each other or over lap so as to leave no gaps beneath the turfgrass or landscape plantings in the apparatus of 599, since it is notoriously well known in the art that turf grass material are manufacture in reticulated panels for ease of handling and when these panels are laid down in an area for turf grass, these panels are laid so as to leave no gaps for safety and aesthetic reasons.


For claim 15, this claimed limitation is similar to claim 9 (see above) except for a

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a means for injecting a gaseous or liquid pest control material into the open, cellular structure of the reticulated material. 599 discloses in col. 1, lines 37-43, the open cell structure can be feed lawn chemicals, etc (col. 1, lines 37-43).

For claim 16, 599 is silent regarding injecting pest control material by using a sharp needle-like device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a sharp needle-like device to inject pest control material in the apparatus of 599 since it is notoriously well known in the art to use a sharp needle to inject chemicals into lawns or turf grass.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.


Son T. Nguyen
Primary Examiner, GAU 3643
March 1, 2004

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)____-____ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted.

For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

NOTICE TO APPLICANT: In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.